

SEALED BY ORDER
OF COURT

FILED

DEC 12 2019

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

190 sp

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10 RAMESH "SUNNY" BALWANI

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION
15

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 HOLMES, et al.,

20 Defendants.
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Case No. 5:18-cr-00258-EJD

**DECLARATION OF JEFFREY B.
COOPERSMITH IN SUPPORT OF
DEFENDANT RAMESH "SUNNY"
BALWANI'S MOTION TO SEVER**

Date: February 10, 2020
Time: 10:00 AM
Judge: Honorable Edward J. Davila
Ctm: 4, 5th Floor

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24 **FILED UNDER SEAL**
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1 I, Jeffrey B. Coopersmith, hereby declare as follows:

2 1. I am a member of the Bar of the State of California, a partner at Orrick, Herrington
3 & Sutcliffe LLP, and lead counsel for Defendant Ramesh "Sunny" Balwani in this action.

4 2. I submit this declaration in support of Mr. Balwani's Motion to Sever. I have
5 personal knowledge of the facts in this declaration. If called as a witness, I could and would
6 competently testify thereto.

7 3. Attached hereto as **Exhibit A** is a true and correct copy of a letter sent to me by
8 counsel for defendant Elizabeth Holmes, dated September 18, 2019.

9 4. Acting under my direction, members of Orrick, Herrington & Sutcliffe's research
10 department searched news outlets in the San Francisco Bay Area for stories mentioning the fraud
11 allegations against Mr. Balwani and Ms. Holmes. The searches, which covered the *San*
12 *Francisco Chronicle*, the *San Jose Mercury News*, the *East Bay Times*, *NBC Bay Area (KNTV)*,
13 *KCBS*, *ABC 7 Bay Area*, *KQED*, and *CBSN Bay Area*, returned more than 150 stories since
14 October 2015, when the *Wall Street Journal* first published a highly negative story on Theranos.
15 A national search covering the same period returned around 600 stories.

16 I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd
17 day of December, 2019 in Seattle, Washington.

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EXHIBIT A

LAW OFFICES

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EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1979)

September 18, 2019

CONFIDENTIAL

Via Email

Mr. Jeffrey B. Coopersmith
Davis Wright Tremaine
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610

Re: United States v. Elizabeth A. Holmes and Ramesh "Sunny" Balwani, Case No. 5:18-cr-258-EJD

Dear Jeff:

Following up on our conversation yesterday, we anticipate filing and serving a notice pursuant to Federal Rule of Criminal Procedure 12.2(b)(1) that Ms. Holmes intends to introduce expert evidence at trial related to a mental condition bearing on guilt.

We anticipate providing the following additional information in connection with the disclosure:

The expert is expected to testify regarding intimate partner violence/abuse (including at least psychological, emotional, [REDACTED] suffered by Ms. Holmes at the hands of Mr. Balwani; the developmental, historical, and psychological factors that made Ms. Holmes particularly vulnerable to the trauma that she suffered; the abusive tactics used by Mr. Balwani that allowed him to exert control over her; and the psychological impact of the relationship on Ms. Holmes during the time period of the relationship and in connection with the charged conspiracy. The expert may also testify regarding scientific research regarding intimate partner violence/abuse and its psychological effects on victims. The expert may also identify diagnoses of Post Traumatic Stress Disorder, [REDACTED] and the relationship between Ms. Holmes and Mr. Balwani, as well as depression.

We received permission from the Court to tell you in advance of our disclosure to the government or to the Court because of the obvious implications this disclosure may have for your client's defense. To that end, please note that we intend to file the disclosure under seal and to ask that these issues remain confidential, both because the disclosure reveals sensitive and

WILLIAMS & CONNOLLY LLP

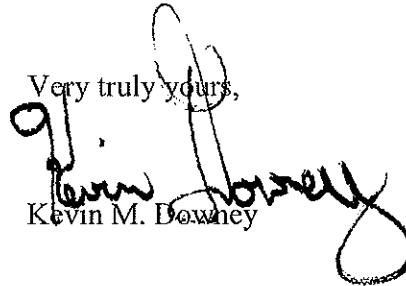
United States v. Holmes and Balwani

September 18, 2019

Page 2

private health information about Ms. Holmes and because your client has a Sixth Amendment right to a trial in front of a jury free from bias that arises from issues that do not directly relate to *his* guilt or innocence of the offenses alleged.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin M. Dwyer", is written over the typed name. The signature is stylized with a large, looping initial "K".

Kevin M. Dwyer